

Applicants: Barbara J. Winslow and Mark D. Cochran  
U.S. Serial No.: 09/303,040  
Filed: April 30, 1999  
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/therefor --endogenous--.

REMARKS

The Examiner acknowledged receipt of applicants' Preliminary Amendment and stated that claims 1-36 are canceled and that new claims 37-73 are pending.

Election/Restriction

The Examiner stated that restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 37-57 and 69-72, drawn to a recombinant virus, classified in class 424, subclasses 199.1, 207.1, and 234.1.
- II. Claims 58-60, 73 and 74, drawn to a vaccine, classified in class 424, subclasses 199.1, 204.1, 207.1, 224.1 and 229.1 and in class 536, subclasses 23.72 and 24.2.
- III. Claims 61 and 64, drawn to a method for enhancing an immune response, classified in class 435, subclass 5, 69.1, 69.7 and 172.3.
- IV. Claim 62, drawn to a method for immunizing, classified in class 435, subclass 5, 69.1, 69.7 and 172.3.
- V. Claims 63 and 65, drawn to a method for suppressing an immune response comprising administering recombinant virus, classified in class 435, subclass 5, 69.1, 69.7

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and 172.3.

VI. Claim 66, drawn to a method for suppressing an immune response administering an antisense nucleic acid, classified in class 435, subclass 5, 69.1, 69.7 and 172.3.

VII. Claims 67 and 68, drawn to a method for reducing or abrogating a tumor, classified in class 435, subclass 7.23.

In reply, applicants traverse the restriction requirement. Without conceding the correctness of the Examiner's position, applicants elect Group I, claims 37-57 and 69-72 drawn to recombinant virus.

Applicants emphasize that the number of restriction groups set forth by the Examiner is improper in that it would not be an undue burden for the Examiner to perform a search for many of the restrictions groups combined. For example, the subclass categorization for Groups I and II are the same, i.e. class 424. More significantly, the class categorization for Groups III-VII are all the same, i.e. class 435 and many of the subclass categorizations are also the same. Applicants point out that there would not be an undue burden placed upon the Examiner to search methods for immunizing and methods for enhancing an immune response (Groups III and IV), as one example.

Applicants request that the Examiner reconsider and withdraw this restriction requirement.

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**Species Election**

The Examiner stated that this application contains claims directed to the following allegedly patentably distinct species of the claimed invention: **1A-raccoonpox; 1B-swinepox virus; 1C-feline herpesvirus.**

The Examiner stated that applicant is required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner stated that currently, the recombinant virus of Claim 41 is generic.

**In reply, applicants traverse the species election requirement and without conceding the correctness of the Examiner's position, applicants elect species 1B - swinepox virus.**

The Examiner stated that this application contains claims directed also to the following patentably distinct species of the claimed invention: **2A-a feline pathogen; 2B-a rabies virus; 2C-Chlamydia; 2D-Toxoplasmosis gondii; 2E-Dirofilaria immitis; 2F-a flea; and 2G-a bacteria pathogen.**

The Examiner stated that applicant is required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, the Examiner stated that the recombinant virus of Claim 45 is generic.

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In reply, applicants traverse the species election requirement and without conceding the correctness of the Examiner's position, applicants elect species 2A - a feline pathogen.

If a telephone conference would be of assistance in advancing the prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone at the number provided below.

No fee, other than the \$110.00 one-month extension of time fee, is believed to be necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Jane M. Love

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:  
Assistant Commissioner for Patents,  
Washington, D.C. 20231.

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